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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/466,963	12/20/1999	Paul Kevin Reeser	2685/5374	1788

7590

02/26/2004

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EXAMINER

THOMSON, WILLIAM D

ART UNIT

PAPER NUMBER

2123

DATE MAILED: 02/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/466,963

Applicant(s)

REESER ET AL.

Examiner

William D. Thomson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: See Continuation Sheet.

Continuation of Attachment(s) 6). Other: Copy of Capacity Planning for Web Performance Metrics, Models and Methods, 1998.

Response to Non-Responsive Arguments

1. Claims 1-22 remain rejected. Applicant's response is held non-responsive.
2. Applicants have attempted to respond to an office action in which they have admitted to not having received the prior art CWPA(98). Applicant failed to avail themselves of the standard practice of requesting the prior art citation, listed on the USPTO 892, and asserted as the base teaching reference in a formal rejection under 35 U.S.C. 103 against the Applicant's claims. If applicant had followed the standard practice and requested this key reference and a restart of the response time they would have been afforded such, specifically a 39 day grace period. Nor did Applicant contact the primary examiner in an attempt to resolve the alleged mailing mistake. In response to applicant's complaints regarding not receiving the prior art citation, the primary examiner is providing another copy of the CWPA(98) reference. However, Applicant should have followed the accepted protocol and practice and not attempt to provide an empty response based upon art allegedly not in their possession.
3. The reply filed on January 13, 2004 is not fully responsive to the prior Office Action because:

Applicant's arguments fail to comply with 37 C.F.R. 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Applicant's arguments do not comply with 37 C.F.R. 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in

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view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

4. Since the period for reply set forth in the prior Office action has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 C.F.R. 1.136(a).

The date on which the petition under 37 C.F.R. 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in an Office action. A fully responsive reply must be timely filed to avoid abandonment of this application.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Thomson whose telephone number is (703) 305-0022. The examiner can be usually reached between 9:30 a.m. - 4:00 p.m.

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Monday thru Friday. Voice mail is checked throughout the day. Please leave a detailed message including the serial number.

Facsimile number is as follows:

703-872-9306

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Kevin Teska, can be reached on 704-305-9704.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is 703-305-3900.

William D. Thomson

A handwritten signature in black ink, appearing to read 'W.D. Thomson', written in a cursive style.

Patent Examiner

A.U. 2123

February 13, 2004